(4)

Supreme Court, U.S.
FILED
FEB 1 2001
OFFICE OF THE CLERK

No. 00-1023

IN THE

Supreme Court of the United States

RICH HALBMAN,

Petitioner,

v.

ST. LOUIS COUNTY, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY TO BRIEFS IN OPPOSITION

DAVID L. SHAPIRO
1575 Massachusetts Avenue
No. 304
Cambridge, MA 02138
(617) 495-4618

KENNETH CHESEBRO*
1600 Massachusetts Avenue
No. 801
Cambridge, MA 02138
(617) 661-4423

JACK M. BEERMANN
765 Commonwealth Avenue
No. 970C
Boston, MA 02215
(617) 353-2577

SEBASTIAN RUCCI
3058 Chardonnay Lane
Poland, OH 44514
(330) 707-1182

Counsel for Petitioner

*Counsel of Record

January 31, 2001

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

BEST AVAILABLE COPY

7pp

REPLY TO BRIEFS IN OPPOSITION

Respondents advance two principal arguments against certiorari. The individual respondents argue that review should be denied because the Eighth Circuit "correctly" interpreted the *Rooker-Feldman* doctrine, and "[d]ecisions in other circuits" adopt a similar approach. Indv. Opp. at 10, 12; *see also id.* at 13-18. The governmental respondents argue that review should be denied because "the *Rooker-Feldman* issue is not outcome determinative," as Halbman assertedly would ultimately lose on res judicata grounds or on the merits if this Court were to grant review, reverse on the *Rooker-Feldman* jurisdictional issue, and remand the case. County Opp. at 5-6; *see also id.* at 6-13; Indv. Opp. at 19-22.

Neither argument has merit. Respondents do not and cannot deny the existence of a conflict among the circuits on two basic aspects of the *Rooker-Feldman* doctrine: whether it applies to nonparties to the state court litigation, and whether it applies when the federal court plaintiff alleges no injury caused by the state court judgment. Therefore, even if this Court is inclined to agree with respondents that the Eighth Circuit's view of *Rooker-Feldman* is correct and is supported by the decisions of other circuits, the petition should be granted. Similarly, speculation over whether Halbman would ultimately prevail following a reversal and remand by this Court is irrelevant to whether this Court should grant certiorari as a means of settling basic and unresolved issues of federal jurisdiction.[1]

---

[1] The arguments of the individual respondents that the petition contains factual errors are themselves inaccurate, and in any event have no bearing on the issues before this Court. The City of Peerless Park was in fact a "fourth class" city subject to regulation as such on the basis of its size. The petition (at 3) did not "incorrectly" address this point, Indv. Opp. at 1 n.3, as it did not purport to list all events that led to the classification.

Contrary to their current position, *see* Indv. Opp. at 2 n.6, the individual respondents did explicitly argue to the County-appointed hearing officer that the hearing officer was limited to making only "a sterile mathematical calculation" of the ratio of petition signatures to the total number of registered

1. The petition presents an important circuit conflict over whether the *Rooker-Feldman* doctrine may be applied to a nonparty to an earlier state court action

The petition argued for a grant of certiorari first and foremost on the basis of the conflict in the circuits on whether the *Rooker-Feldman* doctrine applies to a nonparty to an earlier state court action. Pet. at 8-16. The conflict is clear on the face of the Eighth Circuit's decision. First, the Eighth Circuit held that Halbman was not "a party to the state court action." App. 9a. In particular, it accepted Halbman's argument that the state court plaintiffs "would not have had standing to raise the first amendment and equal protection" arguments advanced by him in his federal litigation, *see* Pet. at 5-6, since, unlike Halbman, they were registered voters. App. 9a. Second, the court then dismissed Halbman's lawsuit on its view that the *Rooker-Feldman* doctrine may be used to foreclose suit by nonparties to the earlier state court litigation. App. 9a-11a. In so doing, the Eighth Circuit candidly recognized that its holding was contrary to decisions from the Third, Sixth, and Ninth Circuits, and to the position of the Wright & Miller treatise, App. 9a-10a, and was in tension with a decision of this Court. App. 11a n.6.

Respondents dispute none of this. Rather, they attempt to demonstrate that the Eighth Circuit *was correct* in holding that

---

voters. Pet. at 4 (quoting Tr. of Jan. 29, 1998, at 57) (Mary B. Schultz, Esq.). That language is not in the statute; it was purely respondents' language.

Respondents complain that the petition "incorrectly states that the state court action challenging the disincorporation of Peerless Park was brought by the city and two of its officials." Indv. Opp. at 2 n.7 (citing Pet. at 4). But here the petition merely reiterated the summary of the lawsuit set forth in the decision of the Eighth Circuit below. *See* App. 4a (cited in Pet. at 4).

The petition stated that the federal court lawsuit below was filed "[s]hortly before the state appellate court's affirmance in the state court action brought by the City of Peerless Park and its officials." Pet. at 5. The individual respondents argue that this statement is inaccurate on the basis of the date of the state appellate court *decision*. Indv. Opp. at 3-4 n.9. But as the governmental respondents note, the federal court lawsuit was filed one week before the date of the state court appellate *mandate*. County Opp. at 1.

"[w]hether lower federal courts may effectively overrule a state court judgment should not be determined by the identity of the parties, but by the nature of the relief requested." Indv. Opp. at 9. Respondents support this argument with several pages of analysis. Indv. Opp. at 10-12, 18. Of course, whether respondents should prevail on the merits is not the issue at this juncture; the issue is whether this case presents important issues of federal law worthy of this Court's review.

Citing isolated decisions from several circuits, respondents argue that the petition "is not accurate" in stating that the "majority rule" prevents the application of *Rooker-Feldman* to nonparties. Indv. Opp. at 17; *see also* Indv. Opp. at 14-17. Even if respondents' analysis is accepted, it only supports the view that there exists widespread conflict and confusion on this issue in the lower courts. Regardless of which is the majority rule, this Court should grant review to establish a uniform rule.[2]

---

[2] One can debate only the precise contours of the conflict, not the conflict itself. Even crediting Indv. Opp. at 12-17 in full, there are decisions from several circuits on each side of the split. The petition cited decisions from the Third, Fourth, Sixth, Ninth, Tenth and Eleventh Circuits as refusing to apply the *Rooker-Feldman* doctrine to a plaintiff who was not a party to the earlier state court litigation, Pet. at 10-13, with only the Seventh and Eighth Circuits applying the doctrine to nonparties. Pet. at 13-15. Respondents make no challenge whatsoever to the petition's citation of the Fourth Circuit as on Halbman's side of the split. Respondents' only citation within the Sixth Circuit is to a district court decision. Indv. Opp. at 15-16. Respondents' only citation within the Ninth Circuit is also to a district court decision (and in a case where the state court had ruled against the federal court plaintiff on the very same claim). Indv. Opp. at 16. Likewise, respondents' only citation within the Eleventh Circuit is to a district court decision that involved a federal court plaintiff who participated in the state court proceeding. Indv. Opp. at 16-17. Further, respondents overlook the fact that the analysis in that district court decision was never addressed on appeal, Pet. at 16, and in any event predated the Eleventh Circuit decision cited by the petition. Pet. at 13. Thus, crediting respondents' analysis simply means that the circuit split on the application of the *Rooker-Feldman* doctrine to nonparties is 4-4, not 6-2.

2. The petition presents a further circuit conflict over the scope of the *Rooker-Feldman* doctrine

As an additional reason for granting certiorari, the petition noted the longstanding disagreement among the circuits over whether the *Rooker-Feldman* doctrine applies when the federal court plaintiff does not allege injury caused by the state court judgment. Pet. at 16-22. In this case, Halbman alleges no injury caused by the earlier state court judgment, which merely rejected an effort by registered voters to overturn the County's disincorporation order on state-law and federal procedural due process grounds. Pet. at 4-5. Rather, Halbman, who was unregistered when the petition was circulated and filed without notice to the city's residents, alleged that the County's voting procedures violated his own federal voting rights, and sought appropriate relief for those violations. Pet. at 5-6, 22.[3]

Under these circumstances — as respondents do not deny — the *Rooker-Feldman* doctrine could not be invoked in the Seventh Circuit or in certain other circuits to block Halbman's federal court lawsuit. Pet. at 17-19. Only under the broader construction of the doctrine followed by the Eighth Circuit and still other circuits could that doctrine be invoked. Pet. at 20-22. A grant of certiorari is thus warranted on this additional ground.

3. Respondents' arguments that Halbman should be barred from suit on grounds of res judicata, or should lose on the merits, are not a basis for denying certiorari

Finally, respondents argue that the *Rooker-Feldman* issue in this case "is not outcome determinative," because if this Court grants review, reverses on the *Rooker-Feldman* jurisdictional

---

[3] In their only response to this ground for certiorari, respondents make the cryptic suggestion that "the alleged injury, the disincorporation of Peerless Park, cannot be distinguished from the state court judgment affirming the disincorporation of Peerless Park." Indv. Opp. at 21. But as noted in the petition, Halbman's "lawsuit simply ignores that judgment, which was entered against others who elected to sue in state court, and seeks only relief against defendants for their allegedly unconstitutional actions." Pet. at 22.

issue, and remands the case, they believe that Halbman will ultimately lose on res judicata grounds or on the merits. County Opp. at 5-13; Indv. Opp. at 19-22. This objection is fundamentally flawed. The question presented by the petition is whether the federal courts have subject-matter jurisdiction over Halbman's lawsuit. That issue, which was the sole basis of the decision below and is the only one properly before this Court, is distinct from the issue of whether, if there is jurisdiction over Halbman's lawsuit, he should prevail on the merits. *See, e.g.*, *Steel Company v. Citizens for a Better Environment*, 523 U.S. 83, 89, 94 (1998).[4]

CONCLUSION

The petition for a writ of certiorari should be granted.

---

[4] As to the merits of Halbman's constitutional claims, they were considered at some length by the district court and were not treated as in any sense frivolous. These claims find support in decisions from this Court and at least three circuits. *See* Pet. at 6 (citing cases); *Carlyn v. Akron*, 726 F.2d 287, 289-90 (6th Cir. 1994); *Berry v. Bourne*, 588 F.2d 422, 424-25 (4th Cir. 1978). As to the argument that Halbman's lawsuit is barred by res judicata on a "virtual representation" theory, this argument was made below, yet neither the district court nor the Eighth Circuit chose to address it. That is hardly surprising. Missouri law precludes the use of a "virtual representation" theory where, as here (*see* Pet. at 5-6; App. 9a), the earlier plaintiffs lacked standing to raise the claims of the later plaintiffs. *See Siebert v. City of Columbia*, 461 S.W.2d 808, 811 (Mo. 1970). Further, the Missouri cases cited by respondents predate key decisions of this Court that would appear to impose constitutional restrictions on the use of "virtual representation" theories of res judicata. *E.g., South Central Bell Telephone Co. v. Alabama*, 526 U.S. 160, 167-68 (1999); *Richards v. Jefferson County*, 517 U.S. 793, 797-802 & n.6 (1996); *see also* 2 *Restatement (Second) of the Law of Judgments* § 62, cmt. a (1982); *Tyus v. Schoemehl*, 93 F.3d 449, 454-55 (8th Cir. 1996), *cert. denied*, 520 U.S. 1166 (1997); *id.* at 458-59 (Henley, J., concurring in the result).

Respectfully submitted.

DAVID L. SHAPIRO
1575 Massachusetts Ave.
No. 304
Cambridge, MA 02138
(617) 495-4618

KENNETH CHESEBRO*
1600 Massachusetts Ave.
No. 801
Cambridge, MA 02138
(617) 661-4423

JACK M. BEERMANN
765 Commonwealth Ave.
No. 970C
Boston, MA 02215
(617) 353-2577

SEBASTIAN RUCCI
3058 Chardonnay Lane
Poland, OH 44514
(330) 707-1182

Counsel for Petitioner

* Counsel of Record

January 31, 2001